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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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BRIAN F. ROGERS,

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Plaintiff,

Case No. 17-cv-03777-PJH

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v.

ORDER DISMISSING ACTION

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ROBERT HALF INTERNATIONAL, INC.,

Re: Dkt. No. 30

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Defendant.

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On July 2, 2019, defendant Robert Half International, Inc. ("RHI") filed a Notice of

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Finality of Appeal and Request for Dismissal of this Action. Dkt. 30. The notice states

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that plaintiff's state court appeal is final, and it requests that this court dismiss this action.

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The Notice and Request is supported by a declaration from William S. Lisa. Plaintiff has

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not filed a response.

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On May 6, 2016, plaintiff Brian Rogers initiated an action against RHI in the

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Superior Court of California, County of San Francisco, alleging unlawful employment

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discrimination. The Superior Court granted RHI's motion for summary judgment in that

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case on April 21, 2017, and plaintiff appealed to the California Court of Appeal, First

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District, Appeal No. A151655.

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On June 30, 2017 plaintiff brought this action based on identical factual allegations

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as his state court complaint, and RHI moved to dismiss or stay this action pending

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resolution of the state court appeal. Dkt. 14. The complaint in this action repeated

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"almost verbatim the factual allegations in the state court [complaint]." Order Denying

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Motion to Dismiss, and Granting Motion to Stay, Dkt. 29 at 3.

1   On October 27, 2017 this court issued an order denying the motion to dismiss and

2   granting the motion to stay, reasoning that "[w]ere it not for the fact that there is no

3   judgment in the state court case, the court would grant the motion to dismiss based on

4   collateral estoppel, as RHI has established all the elements with the exception of a 'final

5   judgment on the merits.'" Id. at 9. The court further stated that "were it not for the fact of

6   the pending appeal, which may or may not be dismissed because of the lack of a

7   judgment, the court would also find that the present case is barred by res judicata." Id.

8   The court required defendant to "notify the court as soon as the state-court appeal is

9   final, assuming the Court of Appeal finds that the order granting summary was

10   appealable despite the lack of a separate judgment." Id. at 13.

11   On May 29, 2019 the California Court of Appeal, First District affirmed the Superior

12   Court's April 21, 2017 decision granting RHI summary judgment and denying plaintiff the

13   opportunity to amend his complaint. The Court of Appeal order provides that "The

14   judgment is affirmed." Dkt. 30-1 at 8.

15   Pursuant to California Rule of Court 8.500(e)(1), for an appellant's case to be

16   heard by the Supreme Court of California, he or she must file and serve a petition for

17   review with the California Supreme Court within ten days after the Court of Appeal

18   Decision is final in that court. The California Court of Appeal, First District's decision was

19   final as of May 29, 2019, and RHI's attorney attests that it has not been served with a

20   petition for review.

21   Pursuant to California Rule of Court 8.500(e)(2) and 8.512(c)(1), the California

22   Supreme Court may order review on its own motion and relieve an appellant of his or her

23   failure to file the proper petition within 30 days after the decision is final. The 30-day time

24   period for the California Supreme Court to have ordered review of the California Court of

25   Appeal's decision affirming summary judgment has lapsed, and RHI's counsel attests

26   that there has been no such order.

27   This court's October 27, 2017 order stated that if the Court of Appeal took up the

28   appeal and affirmed judgment, this action would be dismissed with prejudice. Those

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1   events have come to pass. Given the Court of Appeal's decision and the expiration of

2   time to appeal that opinion, this case is hereby DISMISSED WITH PREJUDICE.

3   **IT IS SO ORDERED.**

4   Dated: July 18, 2019

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                                           PHYLLIS J. HAMILTON
6   United States District Judge

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United States District Court
Northern District of California